

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

FREDRICK D. DEAN,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No. 13-41 Erie
)	
WARNED MARK V. CAPOZZA, et al.,)	
)	
Defendants.)	

MEMORANDUM ORDER

This Petition for Writ of Habeas Corpus was received by the Clerk of Court on February 8, 2013, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

Initially Magistrate Judge Baxter issued an Order dated February 11, 2013, denying Petitioner's Motion for leave to proceed in forma pauperis and ordering Petitioner to pay the filing fee on or before February 26, 2013. ECF No. 2. No filing fee was received by the Clerk of Courts by the due date, and therefore on March 5, 2013, Magistrate Judge Baxter issued a Report and Recommendation, recommending that the case be dismissed for failure to prosecute. ECF No. 3. Objections to the Report and Recommendation were due by March 22, 2013.

On March 6, 2013, the Clerk of Courts received Petitioner's filing fee. ECF No. 5. On March 11, 2013, Petitioner's Habeas Petition was filed. ECF No. 6.

On March 19, 2013, Petitioner's Objections to the Report and Recommendation were filed. ECF No. 7. In his Objections, Petitioner notes that the filing fee has been paid and

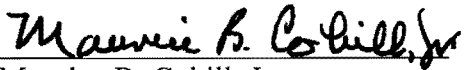
explains that on February 15, 2013, he requested the Prison to issue a check for this purpose, but that the Prison delayed in ensuring that the filing fee was paid.

Although later than ordered, the filing fee in this case has been paid. The documentation Petitioner has provided presumptively shows that he did promptly request to have a check issued for the purposes of the filing fee. Under these circumstances and in the interest of justice we cannot say that Petitioner has failed to prosecute his case such that dismissal of the case is warranted.

After de novo review of the pleadings and documents in the case, together with the Report and Recommendation and Objections thereto, we dismiss as moot Magistrate Judge Baxter's March 5, 2013 Report and Recommendation, and permit this case to proceed.

Accordingly, the following Order is hereby entered.

AND NOW, this 20th day of March, 2013, it is HEREBY ORDERED, ADJUDGED and DECREED that the Report and Recommendation dated March 5, 2013 (ECF No. 3) is dismissed as moot.


Maurice B. Cohill, Jr.
Senior United States District Judge

cc: Counsel of Record

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